

Richdel, Inc. and James A. Cota and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 350. Cases 32-CA-1637 and 32-CA-1825

November 24, 1982

DECISION AND ORDER

On April 2, 1980, Administrative Law Judge James M. Kennedy issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBERS FANNING and JENKINS, dissenting in part:

Contrary to our colleagues, we find that the record establishes that Respondent discharged employee Makert for her protected concerted activity of soliciting employees' statements or signatures on a petition in support of her claim that Supervisor Rivera had been removing name tags from boxes of parts she had produced.

¹ We adopt *pro forma* the Administrative Law Judge's finding that a remedial order would not be necessary assuming that Supervisor Hunt's remark to employee Karr that employee Cota "could get fired" for forming a union was an unlawful threat to discharge an employee for union activity. Hunt's remark was not alleged to be a violation nor was it the subject of an exception.

² We agree with the Administrative Law Judge's finding that Respondent decided to discharge Cota for violating work rules before it became aware of Cota's intention to organize the employees and therefore did not violate Sec. 8(a)(1) or (3). However, in view of Hunt's comment to Karr concerning Respondent's possible response to Cota's plans to form a union, we do not adopt the Administrative Law Judge's finding that there was no evidence of union animus on Respondent's part.

In dismissing the complaint allegations with respect to the discharge of employee Makert, we find that, even assuming that Plant Manager Rodgers relied on Makert's statements that she had sought statements from other employees in connection with her dispute with Supervisor Rivera, that does not establish that Respondent would not have discharged her absent that activity. More importantly, the mere enlisting of other employees' assistance in furtherance of a personal dispute between an employee and a supervisor does not draw activity undertaken in furtherance of that dispute into the protections of the Act. There is no evidence that other employees had experienced similar problems with Rivera or any other supervisor, or that Makert was, in any way, acting on behalf of or in the interest of other employees.

The evidence shows that in late April or early May 1979 Makert and Rivera became involved in a dispute when Rivera ordered Makert to put her name tags on boxes of parts which Makert claimed she had not assembled. Several days later Makert told Supervisor Coulson that she had contacted an attorney about the matter and had spoken to three employees who were willing to state that they had seen Rivera remove name tags from her boxes. Coulson reported the conversation to Department Manager Machado who in turn informed Plant Manager Rodgers of Makert's remarks. Rodgers summoned Makert to a meeting and asked her if she had obtained an attorney against Rivera. Makert admitted contacting an attorney and Rodgers, according to his own testimony, asked her if she had started a petition or sought statements from employees concerning Rivera's conduct. When Makert acknowledged having spoken to employees, Rodgers informed her she had violated company policy and was terminated.

The evidence as credited by the Administrative Law Judge therefore shows that Rodgers admitted discharging Makert after the latter had acknowledged soliciting statements and signatures from her fellow employees concerning a work problem with her immediate supervisor. An employee has a protected right under Section 7 of the Act to consult with other employees and enlist their support with regard to a complaint about a supervisor's performance of her duties. See *Dries & Krump Manufacturing, Inc.*, 221 NLRB 309 (1975), *enfd.* 544 F.2d 320 (7th Cir. 1976). Makert's complaint against Rivera's allegedly improper placement and removal of name tags on boxes of assembled parts concerned a matter that directly affected her employment status and related to working conditions in general. Far from being a personal dispute, Makert's protest pertained to Rivera's performance of her supervisory duties and therefore was of common concern to her fellow employees. Since Respondent admitted discharging Makert for this protected activity, we would find that her discharge violated Section 8(a)(1) of the Act.

DECISION

STATEMENT OF THE CASE

JAMES M. KENNEDY, Administrative Law Judge: This case was heard before me at Carson City, Nevada, on August 2-3 and 14-15, 1979,¹ pursuant to two complaints issued by the Regional Director for Region 32 of the National Labor Relations Board on April 27 and July 12, and which are based on separate charges filed by James A. Cota, an Individual, and United Association of

¹ All dates herein refer to 1979 unless otherwise indicated.

Journeyman and Apprentices of the Plumbing and Pipe-fitting Industry of the United States and Canada, AFL-CIO, Local Union No. 350 (herein called the Union), on March 19 and May 29, respectively. The complaints as consolidated on July 12 allege that Richdel, Inc. (herein called Respondent), has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act).

The Issues

Whether or not Respondent's discharge of James Cota on January 31 and its discharge of Yvonne David on May 9 were for union-related reasons; whether its discharge of Ruth Makert on May 8 was for either union activity or other activity protected by the Act; whether Respondent engaged in various acts and conduct which tended to restrain employees in the exercise of their Section 7 rights such as: interrogating employees about their union activity, limiting employees from discussing unionization while in the plant, telling an employee (Makert) she had been denied a promotion to supervisor because of her union activities, engaging in surveillance, and creating the impression of surveillance of employee union activity. Also alleged as unlawful are the refusal to promote Makert, a 3-day suspension of David, and the issuance of written warnings to both.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

Upon the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent admits it is a Nevada corporation engaged in the manufacturing business and having a factory located in Carson City, Nevada. It further admits that during the past year, in the course and conduct of its business, it has sold goods and materials valued in excess of \$50,000 to customers outside Nevada. Accordingly, it admits, and I find, it to be an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background and Participants

Respondent is the manufacturer of "Lawn Genie" irrigation systems. Its factory is located in Carson City, Nevada, where it fabricates plastic valves and controls for its systems. During the period in question its plant personnel ranged between 238 and 500 employees; as of

the hearing it had approximately 438. They are divided among various departments which include engineering, tooling, plastic molding, rubber molding, solenoid, valve and sprinkler assembly, controller assembly, solid state electronics, and other departments. Its plant manager is Gerald Rodgers. He is assisted by Assistant Plant Manager Robert West and facility Manager Clint Magner.

All of the incidents to be discussed involve the plastic molding department. Before his departure in March the molding department manager was Gary Mozer. During January and February, Rodgers relinquished his duties as plant manager to take over the molding department. In March, Mozer was temporarily assigned to oversee that department. Also in March Mozer left Respondent's employment and was replaced as department manager by Ralph Machado. On the swing shift during the early part of 1979 the department supervisor was Terry Hunt and his assistant was John Callahan. On the day shift beginning January 6 mold specialist Ruth Makert became the assistant department manager. She reported directly to Mozer. Makert's duties during this period are not clear. On February 12, consistent with a new organizational scheme which was then being instituted plantwide, she was made a day-shift supervisor on a 30-day probationary basis. Respondent's records show she was promoted to that job from the job of mold operator specialist despite her assistant manager duties.

On February 6 Raymond Dority became a day-shift supervisor; Leslie Little already held a similar position. On March 20 two other employees were promoted to supervisor on a probationary basis, Irene Rivera and Lyla Rodriguez. In late March or early April Little was demoted to mold specialist; on April 19 Makert was demoted and on June 13 Dority was too. In early April, Little's and Makert's supervisory slots were filled by Sharon Coulson and Marilyn Horton, also on a probationary basis.

The employees who were allegedly unlawfully discharged are James Cota, a swing shift molding machine operator; Makert (previously alluded to above as a probationary supervisor), and Yvonne David, both of whom were day-shift molding specialists. Cota was discharged on January 31; Makert on May 8; and David on May 9.

B. The Discharge of James Cota

Cota was hired on November 1, 1978 and worked for 3 months until he was discharged on January 31. He described the job of operating plastic injection molding machines as very boring. The job is mechanical and routine consisting of the injection of viscous plastic into mold presses, waiting for the automatic machine to eject the completed part and then hand-trimming the "flash" plastic from the part while waiting for a new part to be completed. The operator must also stack the finished parts for pickup by the supervisor. There are 26 machines which vary in size having pressure capabilities ranging between 25 and 375 tons. The value of the machines ranges from \$20,000 to \$1,000,000. The molds themselves which are utilized in the machine are fabricated elsewhere in the plant and are valued at anywhere between \$5 and \$75,000 depending on complexity. Some molds

contain inserts for internal mechanisms within each part; one example is the screw-thread template.

For the most part while Cota was employed his supervisor was Terry Hunt, assisted by John Callahan. Cota testified that in late November an employee who worked in the regrind operation asked him if he would be interested in supporting a union in the plant. Cota does not remember that individual's name or could he recall much about the circumstances. Later, according to Cota, he himself spoke to other employees about unionizing the plant and continued to do so until his discharge. He was quite vague about these conversations and there is no evidence that management was aware of them.

In late January Cota, who believed himself to be among the more competent employees, became upset because another employee was promoted from mold machine operator to regrind, a higher pay job. He believed the decision to be unfair because he was both senior to that individual and because of his view of their comparative competence. On January 29, during the first break of the evening, he spoke to four to six employees in the break room complaining about the promotion of the other man. He remembers telling those employees "if there was a union in this place, they would not have done that." He says it was then that he decided he was definitely going to bring in a union and he told the other people at his table that he intended to do so. At the end of the break he went to his machine. Seeing fellow employee Tony Karr nearby, he called Karr over. He told Karr he intended "to unionize the place." He says Karr replied that he hoped Cota could. Karr corroborates Cota, though he says he made no reply.

Karr says that because Supervisor Hunt had seen the two talking he called Karr to the office. Karr, unlike Cota, was not stationed at a particular machine for he was a setup man; it was, therefore, more efficient for Hunt to speak to Karr rather than Cota. Karr testified Hunt asked him what Cota had said and he replied Cota had said he was "forming a union." Hunt remarked, "Cota could get fired for that."

Several days earlier Cota says he had asked for a transfer from the swing to the graveyard shift. He says on January 30 Hunt told him his transfer request had been approved and he would begin working the graveyard shift on Monday, February 5.

On January 31 he reported to work at 4 p.m. and found his timecard had been removed from the rack. Hunt directed him to see Department Manager Mozer. Cota testified Mozer told him he was being fired for reading a book while operating his machine. He replied, "So what?" and asked if he was really being fired because he was for the Union. Mozer ignored the question and continued his explanation saying that in addition he was firing Cota for making "strange noises."

Supervisor Leslie Little testified that in late January or early February she had a conversation with Mozer. She says she is unable to recall the exact words Mozer used but remembers Mozer saying he intended to terminate Cota. When she asked on what grounds, Mozer replied, "For reading a book." She then asked "Why?" and Mozer said, "He's a union activist and we can't fire him for that."

Little's testimony here is subject to great doubt. First, payroll and attendance records show she was on a leave of absence during the last 3 weeks of January and the first portion of February. Her description of the conversation indicates that the discussion occurred before Cota was fired, meaning it took place in January before her leave of absence expired. The General Counsel did not recall her to explain how she could have had such a conversation if she were not working in the plant. In addition, she appeared to be angry with Respondent. She says she quit in April due to the "incompetency of management and the employees." She was a good friend of dischargée Makert, though she says Makert's demotion which occurred about the same time she quit did not affect her decision to quit. And she did not reveal her conversation with Mozer to anyone until 3 days before the instant hearing when she mentioned it to Makert who in turn reported it to counsel for the General Counsel.

As noted before, Mozer and Hunt are no longer employed by Respondent. Neither testified. Nonetheless, the reasons advanced by Mozer to Cota for his discharge do not seem unlikely. Cota admits he constantly read magazines and books while operating his machine. He also admits engaging in daily horseplay including throwing wet wads of paper toweling at fellow employees and making sudden, loud animal-like noises—wolf howls, pig squeals, and the like. He confesses to being the worst transgressor in his area. He claims, however, that Hunt and Callahan were aware of his disruptive activity and not only overlooked it, but to some extent participated in it. He testified they observed him reading regularly and even asked him what he was reading. He also says both Hunt and Callahan themselves occasionally threw wet towel wads.

Callahan denies Cota's testimony in this regard. He says neither he nor Hunt ever threw towel wads and, although they tolerated the loud animal noises, he was unaware and believes Hunt to have been unaware that Cota was regularly reading while operating his machine. However, he considered Cota to be deficient and disruptive in other respects. Once in December he saw Cota putting his feet on the machine "gate," risking an automatic premature opening. Should that have occurred, he said, the part would not have been properly cured and there was a risk of damaging both the mold and the inserts. He says he cautioned Cota against that practice. Later in December he warned Cota not to open the machine too early after Cota boasted he could increase production by doing so. The same risks to the part and the molds applied. As noted, the molds and inserts could be costly to replace.

During the second week in December he told Cota to stop hollering and making strange sounds as he was disrupting others and to pay more attention to his machine and less to other operators.

Also at one point in December Callahan was training a new female employee, Laurie Bauk. They were working on the machine next to Cota's. Callahan says Cota began remarking about Bauk's full figure, interrupting them by saying she was providing "the best show I have had in

years." Similar gibes continued and she requested that she be moved to another machine. Callahan complied, but within minutes she asked to be moved to a third machine because Cota was still verbally harassing her. Callahan complied again.

In the third week of December Callahan was nearly hit by a wet paper towel wad thrown by Cota. Callahan was busy and did not actually see who had thrown it, but another employee did and told Callahan, saying "something ought to be done" because someone could get hurt. Callahan told Hunt about the incident.³ Whether Hunt did anything immediately is unclear. Later, in January, shortly before Mozer took over the swing shift, Callahan heard Hunt tell Mozer there was a problem with Cota; he had been distracting other operators. Mozer said he would keep an eye on Cota when he took over the swing shift. In mid or late January Mozer swapped shifts with Hunt and Callahan.

Earlier in January, Mozer had told Callahan he had observed some swing-shift employees reading books while operating their machines. Callahan says Mozer directed him to tell the employees to stop that practice and to advise them that reading while operating the machines "could be cause for dismissal." At the beginning of the shift on the following day Callahan carried out his instructions, calling all the employees together at the break room. He specifically remembers Cota being present because Cota sat in the front portion of the room. He says he told the crew to stop reading books and that if they continued to do so they could be discharged.

Cota denies such a warning was given and is corroborated to some extent by fellow machine operator Susan Mansker. Callahan doubts Mansker attended the warning session saying she was usually late for work. He is not positive about her absence. She often came to work with Karr; Karr did not attend the meeting but learned its substance from fellow employees. He is certain a warning was given. Mansker also says while she and other employees commonly read while working on the machines, she only saw Cota do it once.

She also agrees with Cota that "everyone" threw wet paper wads and yelled. She says she even saw supervisors throw wads at each other and at one point Hunt asked her what she was reading. Callahan says the only time he asked Mansker what she was reading was once during a break.

Rhonda Correa says that in November 1978 she was reading while on a machine and another supervisor, one Tom (whose last name she does not know), told her to stop. She says she often saw Cota read in December and January. Others read too, but less than Cota. She remembers Cota throwing wads and plastic waste. Once Cota attempted to shock her by placing some brown plastic waste in her cooling basin. The waste gave the appearance of animal excrement and when she reacted as expected Cota thought it was quite funny. She admits she threw paper wads, but says the only person at whom she threw was Cota and only after he had thrown at her

first. She is certain the supervisors did not observe them. She never saw any supervisor engage in that conduct. Karr also says he does not believe the supervisors were aware of the towel throwing. In addition Karr reports that some time after Cota had been discharged Cota told him he intended to "milk" Respondent for \$1 million.

Plant Manager Rodgers testified that, in January and February, he was so concerned with the plastic molding department's inefficiency—high employee turnover and high parts rejection rate—that he temporarily relinquished his authority as plant manager and took over that department. It was he who directed Mozer to take over the swing shift for a week. Although not directly stated, it is apparent Rodgers believed the department was inefficient because of improper supervision and disruptive elements within the department.

Callahan, accepting counsel's statement, says that in the "second full week" of January,³ Mozer took over the swing shift himself, sending Hunt and him to the day shift. On the first workday after the shift swap ended, Mozer told Callahan that he had seen Cota reading on his machine, throwing material, and distracting other employees; he wanted Cota fired. Within a day or two, Cota asked Callahan why another employee had been transferred to regrind, instead of him. Later that evening Cota groused "if there was a union here, this kind of thing wouldn't have happened." On the following day Callahan told Mozer that Cota wanted to know why the other man had been promoted over him. Callahan recalls Mozer saying, "Well, don't worry about it; I think we are going to terminate him anyway." Callahan denies telling Mozer or anyone else about Cota's remark about a union.

It is clear that the decision to fire Cota was made by Mozer, not Hunt or Callahan. On the personnel record reflecting Cota's discharge, Mozer wrote, "very poor attitude, reading books while operating machine, whistling and hollering distracting other machine operators."

C. Alleged Interference, Restraint, and Coercion

In March a number of incidents occurred which the General Counsel alleges violated Section 8(a)(1) of the Act. On March 19, Yvonne David had gone shopping at a local market where she met a former employee who advised her that a union was attempting to organize Respondent's plant. In the morning of March 20 she expressed fear for her job to fellow employee Joyce Fowle. Fowle thought David's attitude silly but reported David's fears to Clint Magner without revealing David's name. Magner mentioned the matter to Rodgers and the

³ This was the first Callahan knew of Cota's towel throwing. He saw it occur on numerous occasions thereafter, but said nothing about it.

³ While Callahan is clear about the sequence of events his recitation of dates is not accurate. He says Cota was fired on a Friday; it was actually a Wednesday. Likewise, he says that Cota, 2 days before his discharge, remarked that if a union were present another employee would not have gotten the regrind job. When asked the same question another way he says it occurred midweek of the week he returned to the swing shift. If the shift swap was the "second full week" of January (the week of January 14), as he said, that places the conversation around January 24, a full week before Cota's discharge. Even though Callahan is confused on dates, he was credible in all other respects and I see no reason to doubt him. He and Cota agree that the union remark was made 2 days before the discharge and Callahan's dates can be reasonably reconstructed by working backward from that point.

two called Fowle to the nurses office. Magner asked her to repeat what she had said. After assuring Fowle that nothing adverse would happen to the employee in question and that their only purpose was to alleviate the anxieties the employee might have, Fowle agreed to send in the employee. Not until David appeared did either Rodgers or Magner know the identity of the person with whom Fowle was concerned.

David testified Rodgers told her he understood a union member had contacted her and that she was afraid that if she spoke of union matters she would be fired. He told her to sit down, that he had no intention of firing her. She says he then asked her if the person who had approached her was anyone in the plant. She replied negatively, saying that it was a former employee. He then asked if it was former employee John Holt and when she refused to answer he replied, "Thank you. You have answered my question." She agreed her silence was an admission that Holt was the individual involved. She then offered that she had not "worked for a union before" and did know about them. She says he told her Nevada was a right-to-work State and the Union could not give her more than the Company already had. She says he told her if she struck she could not get unemployment insurance and observed that she had four children to support, asking how she could pay her bills if she was on strike. She says she told him she wished to talk to her father about it as he was a union member. She remembers Rodgers saying that when unions first began they were good but now all they wanted was employees' money; every time employees would get a raise, their union dues would increase. She also says he asked her not to speak of the Union inside the plant and she agreed, saying she would seek information about the Union outside the plant.

Both Magner's and Rodgers' versions are significantly different. Rodgers says that, after he expressed knowledge that David was fearful regarding union matters, he told her she had a legal right to discuss the Union but did not want her to do it while she was working on her machine. When she expressed ignorance regarding unions and what purpose they served, he told her she "should get both sides" and when she observed that her father was a union member he told her "By all means, talk to him." He denies he made any reference to strikes, unpaid bills, or unemployment insurance. He says it was she, not him, who mentioned she had four children.

Magner corroborates Rodgers in all respects. He says Rodgers told David she should have no fear, that no one would be fired over the Union. He remembers Rodgers suggesting that she ask questions of knowledgeable people regarding both sides of the issue but asked her not to discuss those matters while she was actually working on her machine. He denies Rodgers said the only thing unions could do was to strike and denies Rodgers referred to her ability to pay bills. He remembers Rodgers telling her she should check with her father and friends, go to a union meeting if she wished, but she was to rest assured it would not cost her her job. He denies Rodgers ever told David not to talk about the Union at the plant.

Fowle reports that after David left the meeting and returned to her machine David told Fowle "everything was okay" and Rodgers had even told her to find out about unions if she were interested.

In view of the fact that David agrees that Rodgers told her she would not be fired for union activities, and because I credit Fowle's testimony that David told her Rodgers had urged her to speak to others, no doubt including her father, to find out about unions, it seems unlikely that the remainder of her testimony is accurate. Rather it seems to me Rodgers' and Magner's statement that she should refrain from union activities while working on her machine is the more probable of the two versions. Moreover, their testimony is mutually corroborative, in good detail and matter of fact. Accordingly I credit Rodgers' and Magner's denial that Rodgers ever ordered her not to speak about or discuss the Union inside Respondent's facility.

That same day, March 20, Irene Rivera and Lyla Rodriguez were appointed probationary supervisors, joining Ruth Makert in that capacity. On approximately March 27 Rodgers called all three to his office, apparently to ask them how their new job was working out. Makert testified that during the meeting Rodgers asked if they had heard anything about union activities within the plant. She says she told him then employee Sharon Coulson had said an employee named Shirley "Grannie" Smith had approached her about attending a union meeting. According to Makert Rodgers immediately called in Mozer to tell him that union activity was underway. Shortly thereafter he dismissed all three but before doing so, told them "as supervisors" they "were representatives of management," and advised them not to sign pledge cards because that might inadvertently result in company acceptance of the Union. He suggested they submit any union mail to him unopened so he could put it in a safe. She says he also told him to "keep an eye on our people" as he wanted to know when supervisors heard of anyone speaking about the Union.

Makert testified that a few hours later Rodgers called a meeting of all supervisors on all shifts and said he knew union activities were occurring but thought it was confined to the graveyard shift though it might be spreading to days. She says he listed a number of "do's and don'ts" regarding the Union, telling the supervisory staff to "push the Company benefits" and not to "downgrade" the Union. Makert said Rodgers told them the only people who would join the Union "were misfits and people who were insecure in their jobs, and that unions were nothing but communist organizations; all they were out to get was just people's money."

Rodgers agrees such meetings were held but denies making the statements attributed to him by Makert. He is corroborated in large part by supervisors Rivera and Rodriguez. Both he and Rodriguez say Makert was the one who raised the subject of unions at the first meeting by volunteering that Smith had broached the topic. Rodgers says he responded to Makert saying union activity was the employees' right as long as they did not engage in such activity at their work station during work. He denies telling the supervisors to keep an eye on employ-

ees' union activities. He is corroborated by Rivera who says Rodgers told them, "I don't want you to spy on them. I just want to make sure there is no union activity on the machines." Rodriguez says Rodgers did not even wish to discuss the matter with the supervisors at that time. She, too, denies that he told supervisors to keep an eye out on employees.

The General Counsel alleges this incident to constitute instructing employees to engage in surveillance of employees' protected activity. The Respondent defends on two grounds: first, the incident did not occur as reported by Makert, arguing that her version is not credible; second, it urges that the individuals in question are statutory supervisors, not employees, and that even if it did occur it was within Respondent's management prerogative to be alert to union organizing efforts. Without reaching the supervisory issue, I agree with Respondent that Makert is not credible. That is particularly so with respect to her quoting Rodgers as saying labor organizations were communist. Rodgers' father, brother, and uncle are all members of another union, the International Association of Machinists and Aerospace Workers, and his father has recently engaged in a strike against his employer. It is unlikely, given Rodgers' close family connection to a labor organization, that he would refer to unions generally as communist organizations. It seems to me that Makert here exhibited a tendency to exaggerate. Furthermore, both in her pretrial affidavit and in cross-examination she said, contrary to her testimony on direct, that Rodgers had never told her to engage in surveillance of the Union or employees' union activities. On redirect she said he did. Believing she may have been confused over terminology, I questioned her further and am satisfied she understood the question each time, but gave opposite answers. Weighing both factors—her tendency to exaggerate and her equivocation—she is not credited. Furthermore, I note that Rodgers is corroborated in close detail by Rivera and Rodriguez. I conclude, therefore, that the conversation did not occur as alleged.⁴

On Saturday, April 28, the Union conducted an organizational meeting at the Carson City Civic Center, a complex which includes an auditorium where the meeting was held, and two swimming pools, an outdoor pool immediately adjacent to the auditorium and an indoor pool located 400–500 feet away. Supervisor Dority on the day of the meeting had taken his daughter-in-law to swim in the indoor pool, as was her habit. It appears that Dority's son and daughter-in-law do not own an operable automobile and he commonly chauffeured them on various weekend errands such as shopping and other activities. He testified his daughter-in-law swam regularly

⁴ Also corroborative of Respondent's version is the testimony of then Supervisor Raymond Dority who testified that during the course of the supervisory training program, which Rodgers in part conducted, that the manner of responding to union activity was discussed. He says there were no instructions regarding what steps supervisors were to take with respect to reporting that activity to higher management. He does say, in somewhat imprecise terms, that supervisors were instructed to tell employees not to engage in union activity during "working hours." Because of Dority's imprecision and other, more precise, testimony elsewhere, I take it that he actually was instructed to tell employees not to engage in union activity while working on their machines.

at the pool and he had taken her there on other occasions. It further appears that the front door of the auditorium is not visible from the indoor pool parking lot. Dority says during the 2 hours or so that he was present in the lot he sat in the car, listened to its radio, read, and left the car to walk about the immediate vicinity. He admits that during one of his sojourns he saw employee "Grannie" Smith and another (not Yvonne David) and it suddenly dawned on him that the union meeting was taking place in the auditorium. He says he did not see any other employee whom he remembers. David testified that she, however, saw Dority.

The next workday, Monday, according to Ruth Makert, she had a strange conversation. Approximately 3 weeks earlier she had been demoted from supervisor to mold operator specialist. On the day before the meeting, April 27, Makert says she signed a union authorization card but she did not attend the union meeting. On Monday, April 30, Makert says Supervisor Lyla Rodriguez told her that Department Manager Ralph Machado "had told her that through a good source that he had heard I [Makert] had attended that union meeting on the 28th, and that Raymond Dority was there, and he told Lyla he was the one that said I was there at that meeting."

Rodriguez denies the incident altogether. She says she had no conversation with Makert at her machine about a union meeting that day and never told Makert that Machado had learned through a good source that she had attended the union meeting. In addition she says she never told Makert that Dority had told her that it was he who said she was at the meeting. Dority himself says he never reported his observation to anyone.

First of all, I credit Dority's version that he was not at the swimming pool to engage in any surveillance of union activity. He says he had forgotten the meeting was to be conducted until he actually saw people attending the meeting. Nonetheless, it appears to me that he had a legitimate reason for being where he was, to transport his daughter-in-law for her recreation. Furthermore, he appeared to be a credible witness in all other respects and I credit his testimony that he did not tell anyone what he had seen. He had no particular reason to do so and he had not been instructed to do so. Moreover, it seems quite unlikely that he would have told anyone he had seen, Makert present at the meeting; she did not attend it. That being the case, it seems unlikely that Rodriguez would have either been told or invented such facts. Indeed, the contrary appears to be true. I have noted elsewhere that Makert has a tendency to exaggerate and I have discredited her above. Accordingly, I disbelieve Makert's version here and credit Rodriguez. I therefore find that the incident did not occur as Makert claims. Thus, I find the allegations that Dority engaged in surveillance of the union meeting and that Rodriguez gave the impression that Respondent had engaged in surveillance to be unproven.

D. The Discharge of Ruth Makert

Sometime in late March, though Makert says it was late April, Supervisor Leslie Little was demoted. Makert

was then still a probationary supervisor. Little's demotion upset her and she spoke to Plant Manager Rodgers and Department Manager Machado about Little's demotion. They say the conversation occurred on April 2 and that Makert asked them, in tears, why Little had been demoted. Rodgers explained his reasons and then told Makert he thought she was getting too emotionally involved with the people in her department. She says Rodgers told her she was "clannish" and "associating with the wrong people." She says he gave her a week to straighten out. Rodgers and Machado simply say they told her to avoid becoming too wrapped up in people's problems. They deny they gave her a week to straighten out and they also deny saying that she was clannish and/or associated with the wrong people.

On April 9 Machado advised Makert that she had not passed the probationary period as a supervisor and he was returning her to a machine. She says he again stated she associated with the wrong people and also remarked that she did not accept the authority of her boss. Machado denies the latter remarks. He says he simply told her she was having problems with her foreman and difficulty in communicating with fellow supervisors. On April 10 Machado completed a personnel status report attaching an appraisal form dealing with her 30-day probation period. The report is consistent with his testimony.

Actually Makert had been a supervisor for nearly 60, rather than 30, days. On the appraisal form Machado checked boxes which stated that she did not maintain sufficiently effective working relationships with others and did not fully meet the requirements of the supervisor's job. Her change in status did not result in any loss of pay, but instead of supervising six machines on the day shift she began operating one of them.

Makert's apparent replacement as a supervisor was Sharon Coulson. Both Rivera and Coulson report that immediately after her demotion Makert became reticent toward them. Coulson says that she had to "break the ice" with Makert with whom she had previously been on good terms. Rivera testified Makert, as well as Yvonne David, see *infra*, began replying tersely and obliquely to normal production inquiries. This included a sarcastic "Yes, ma'am; No, ma'am" routine in answer to all questions. David appears to have done this to a greater extent than Makert.

On April 18, according to Rivera, she observed excess plastic "flash" on Makert's parts. Accordingly, she called Makert's attention to it and said she did not appear to be trimming the parts properly. Makert said she was, and Rivera replied, "Well, they are not being done." She checked further and concluded she was correct. Later she mentioned it to Machado. On April 30, the same day Makert contends Rodriguez told her Machado knew she had been at the union meeting (see subsec. C, *supra*), Rivera asked her if she wanted to be placed on machine number 15 on a permanent basis. If so, she went on, it would mean that Makert would permanently be under Rivera's authority. Rivera says Makert responded, "Well, I don't care." Rivera offered to discuss whatever problem they might have together but Makert said she did not want to, and did not have to communicate with

Rivera. Rivera responded she had the authority to put her on number 15 permanently and Makert responded that she "didn't care about [Rivera's] authority." Rivera interpreted Makert's attitude as a challenge and was upset by it. She reported the matter to Machado and told him she might quit.

Makert describes the conversation somewhat differently. She contends that when Rivera asked her if she wanted to work on machine number 15 under her authority she simply replied that it was immaterial for whom she worked. To that Rivera gave the somewhat angry response, "Well, if you feel that way, I don't want you on my machines."

Makert says later that day Rivera ordered her to put her name tag on some boxes of parts which she had not fabricated. Rivera says that occurred on May 2 and that after some dispute over whether Makert was obligated to put her name tag on the box, she told Makert to put "half box" on that particular lot. Makert refused even that request and Rivera told Makert she had to accept her authority but Makert countered that she did not. Rivera reported that, too, to Machado. The conversation was overheard by operator Florence Bassett. Shortly thereafter Supervisor Sharon Coulson says she heard Makert refer to Rivera as a "bitch" and she told Machado.

Following this, Machado called Makert in for a discussion. Present were both Rivera and Coulson. Makert testified Machado told her that he had heard she was having a problem with Rivera who had told him Makert did not care what Rivera's authority was and that "I was refusing to put my name in the boxes and was being rude to her." They then discussed the factual differences regarding the name tag incident and when Makert said Bassett could shed some light on the incident, Machado called Bassett to the meeting. Makert says Bassett corroborated her by telling Machado what happened, who started the conversation, and the tone of voice that was used. She was then dismissed with Machado saying, "We will just discount what Florence said and you are on probation for a one-week period of time, in which time, if your attitude does not change, we will take other measures."

Bassett testified that when she was called in she simply reported that she heard Rivera tell Makert to put tags on a box and that Makert said it was not hers and that she did not care what Irene said. She saw Rivera become visibly angry. If anything, Bassett corroborates Rivera, not Makert.

Machado testified he had received complaints from Rivera and Coulson that Makert was not communicating with supervisors. He says that when he called her to his office she denied that charge asserting she had been communicating but he replied, "No, you are still having problems dealing with the supervisors; you won't answer when they talk to you. Also, you made the statement, 'I don't care what your authority is' referring to Irene Rivera." He says he told her the problem was continuing and she would have to do something about it. Accordingly, he gave her 1 week to "straighten up" and said if the problem was not corrected he was going to take

"further action." He asked her if she understood and she replied that she did. He says Bassett added very little to what his concern was and denies saying that he would "discount" what she had said.

After the meeting was over Joyce Fowle, another machine operator, heard Makert in the parking lot refer to Rivera as a "lying bitch."

Mold operator Deborah Hanson testified that sometime in early May Makert told her that she had five to six witnesses who would prove that Irene was removing tags from the boxes. On May 8, according to Coulson, she had a conversation with Makert about Rivera. Coulson says Makert told her she had contacted an attorney "against Irene" and that she had three witnesses who would say they had seen Rivera remove name tags from Makert's boxes. Coulson reported that conversation to Machado and made a note of it on a personnel record-keeping form. Later that day Machado pulled Makert off her machine and took her to the office where Plant Manager Rodgers, Machado, and the supervisory staff were assembled. Makert says Rodgers had a copy of the personnel manual and asked her if she had acknowledged receiving it by signing a receipt for a copy. When she admitted she had, he said, "I hear you have an attorney against Irene Rivera—do you?" When she replied affirmatively, she says he told her she was fired and directed Machado to "Get her out of here before I throw her out the window."

Rodgers describes the meeting less graphically. He says he asked Makert if she had obtained an attorney "against Irene" and when Makert replied that she had, showed her her signature slip recently acknowledging the company policy manual and asked if it was her signature. When she replied it was, he asked her if she had started a petition or getting together employees to sign statements against Irene. He says she replied that she had. He then pointed out the clauses of the company policy manual saying that he felt she had violated the policy and she was terminated. He concedes telling Machado to get her out of the plant but denies telling him to get her out before he threw her out the window.

Rodgers then caused to be filled out a personnel status change report in which he stated Makert was being discharged for violating company policies and engaging in insubordination, willful misconduct, performing company business outside the plant without permission, and intimidating or coercing another person while on the job.

The other witnesses present corroborate Rodgers in all respects (except they omit his reference to "a petition") including denying Makert's claim that Rodgers told Machado to "get her out of her before I throw her out the window."

E. The Discharge of Yvonne David

I have previously recounted the incident involving David and Rodgers which occurred in the nurses office on March 20. She also testified that on April 2 she was shopping at a local grocery store where she spoke to a friend and mentioned that former Mold Department Manager Gary Mozer had been "fired." On the following day Machado called her to his office and scolded her for falsely telling someone Mozer had been fired. He said

that was misconduct sufficient to cause her to be fired. She thought it over and decided she did not really know whether Mozer had been fired and accepted Machado's statement that Mozer had quit. She offered to apologize to Mozer. Machado sent her back to work.

On April 18 David asked Rivera why Makert had been demoted. When Rivera replied Makert had lost her position because she was "not doing her job," David exclaimed, "My God, doesn't this plant give anyone a chance?" Rivera went on saying there had been too many complaints about Makert from her own people to which David skeptically replied, "Oh, come on Irene."

Later that afternoon Machado called David to his office and told her he had heard she had been "hot" with her supervisor. When she denied it, he said, "Don't let me hear about it again." Immediately thereafter, she admits beginning a sarcastic "Yes, ma'am; no, ma'am" routine with her supervisors. She deliberately became formal and terse with them.

On April 20 or thereabouts she attended a company meeting called by Rodgers which was a question-and-answer session regarding unions. Nothing about that meeting is alleged to be unlawful or evidence of union animus.

On April 28 she attended the union meeting at the Carson City Civic Center. She says on the day before that meeting Facility Manager Clint Magner saw her at the plant exit pick up a union flyer. While at the meeting she saw Dority waiting in the parking lot in front of the indoor swimming pool.

At the beginning of the shift on May 1 Makert offered to trade machines with her and David agreed. Both went to Machado to get permission but he decided to consult with Coulson and Rivera. David testified that because no answer was immediately forthcoming they went back to their respective machines. While David was putting up her "bodies," draining them, taking the caps, shaking them off and counting them, Coulson called to her. She waited until she was through with her count and then asked what Coulson wanted. Coulson said, "Will you please put your caps in the box? Drain them first before you put them in the box." David asked why and Coulson replied, "so the box doesn't fall out." David continued to work. A few minutes later Coulson came up from behind and was watching David box the bodies when the mold machine opened and a part began to eject. David ran to her gate to grab the part before it fell but in her haste accidentally knocked over the bodies, requiring her to restack. She uttered the mild epithet, "damn" and went back to work. Coulson said nothing to her about that incident. Later she and Rivera came over to pick up her completed boxes and Coulson asked if David had put her name tag on a particular box. David replied that she had not because it was not hers; that the box had been nearly completed by someone on the earlier shift. David says Rivera told Coulson to put David's name tag on it anyway. David interjected, "Fine, but if anything is wrong with them and they have got cracks in it, I will deny that I had anything to do with that box." They left, then returned and David admits she began smiling at them in an odd way. According to David, Rivera finally

asked if something was funny and when David replied, "There is," Irene's face turned red and she walked off.

David says shortly after the 10 a.m. break Machado called her to his office and asked if she was feeling okay. Both Rivera and Coulson were present. When she replied she was, he asked if she were sure. When she insisted she was okay, he said he did not think so. Coulson then said she believed David had been insubordinate. David asked if she were referring to the name tags or her statement that she would not sign the paper if the bodies were wrong. Coulson said no, she was referring to a "my God" utterance David had allegedly made. David replied she had said "damn" when her bodies fell over; then David told them that if they wanted to take everything seriously, that was their problem but it was "just like when she had supposedly gotten 'hot' with Rivera, but hadn't."

David testified Machado then interjected saying he could not have this sort of conflict going on in the mold department every day and he had decided to suspend David for 3 days. He had her sign a suspension slip and told her he did not want to see her back until Monday, and then with a different attitude. He then said, according to David, "I can't go out and kiss you, what do you want me to do, go out and kiss your feet?" She then replied, "No, sir, but I don't expect to kiss anybody else's feet either." He told her to return on Monday with a different attitude because "after all, you have four kids to support."

Machado describes the conversation differently. He says he had had complaints about David from Rivera and Coulson and accordingly brought in David to ask her what the problems were that she was having with her supervisors. She replied, "Nothing really." He then told her he had heard she was not communicating. She replied she was. He asserted that she was not; they were having a problem with her every day; she would not answer and would not talk to the supervisors and the entire matter had been going on for some time. In this regard it should be noted that David admits she had not ceased her "Yes, ma'am; no ma'am" routine. He told her she was being suspended for 3 days to see if the problem would clear up. Machado then filled out the suspension report in which he stated that she had been warned before about being insubordinate to supervisors and that every day they were having the same problems with her failure to communicate with them. He also observed she had been moved to different supervisors but the problem had not been resolved. Both Coulson and Rivera corroborate Machado's version.

When the suspension was over David returned to work on Monday, May 7. On the following day Makert was discharged as recounted above. On Wednesday, May 9, David went to the lunchroom at 7:30 a.m. prior to beginning of the shift. A group of employees was discussing Makert's discharge and David remarked she did not think it was right. She also said he was quite upset with the hassles she was getting. David then told the others, "If Irene [Rivera] gets me fired on a lie I will go over to her table and pull her damn black hair out." She says she said nothing further. Deborah Hanson was one of the employees who heard David's remarks. She adds

David also said if she was fired "she would take Rivera with her." Hanson reported the entire conversation to Rivera. Later that day she heard David say she would shoot Rivera if she was fired and would also shoot anyone who helped fire her.

About 3:30 p.m. David was called to Machado's office and she asked, "What have I done now?" He did not reply but took her to Assistant Plant Manager Robert West's office. On their arrival Machado said he had heard her derogatory remark about pulling out Irene's hair and wanted to know if she had made the statement. She admitted that she had. At that point West asked when the trouble had started. She replied that it had begun when Rivera "lied on number 15," the incident described above when Machado told her he had heard she had been "hot" with her supervisor. She says he told her he "had to go with his supervisors." West declared that after reviewing her record he had decided to terminate her on the basis of attitude. She says she offered to keep her mouth shut but West said that was not good enough.

According to Rivera, after hearing the report of David's threat from Hanson, she went to West. West in turn referred her to Machado and the two later had a discussion about David. Machado and West reviewed David's record and, according to Machado, decided that, if she had actually made the statement, she should be terminated. They then prepared the papers in advance, a routine procedure in discharge situations. Except for that background Respondent's witnesses agree that David's description is essentially accurate. Machado says David admitted saying she would "beat up Irene" rather than pull her hair out, but the purport is the same. They had already filled out the personnel status change form and had placed on it that she was being fired for "bad attitude—making threatening remarks toward department supervisors. She has been warned before about her attitude." She was asked to sign the form but instead wrote on the back, "One supervisor has lied and provoked my attitude to no end."

Both Machado and West deny any knowledge about the March 20 conversation David had with Rodgers at the nurses office. They say that by the time of the hearing they had become aware of it but during the discharge were ignorant of it.

IV. ANALYSIS AND CONCLUSIONS

A. James Cota

In analyzing the factual circumstances leading to Cota's discharge I have concluded that the General Counsel has failed to prove that Respondent's discharge of Cota was motivated by either his union activities or a desire to chill such activity.

First, there is no evidence that in late January either Rodgers or Mozer was aware of any union activity by Cota or any other employee. The only evidence that management was aware of Cota's desire to organize a union was Karr's report to Hunt and Cota's remark to Callahan that, if there were a union in the plant, another individual would not have gotten a promotion. Cota's

grousing to Hunt was no more than a disgruntled complaint. After listening to Cota at the hearing it is difficult for me to believe Karr, Hunt, or anyone else would have taken Cota seriously. Callahan certainly recognized Cota's attitude for what it was. He did not even bother to tell Mozer, though he did tell him that Cota was complaining over the promotion of another employee. That was the thrust of Cota's complaint, not his union-organizing propensity.

The General Counsel argues, however, that Hunt's and Callahan's knowledge must be imputed to the decisionmaker, Mozer. It is true that neither Mozer or Hunt testified; only Callahan did. However, in view of the fact that the only reasons Cota says Mozer gave him for discharge are consistent with the personnel record made by Mozer, I do not see any reason to draw an adverse inference against Respondent for failing to call them.⁵

Second, there is no evidence of union animus on the part of either Mozer or Respondent generally. There is no reason to doubt Karr's testimony that Hunt told him Cota "could get fired" for union organizing, but, equally, there is no evidence that Hunt's remark reflected company policy or even Mozer's policy.⁶ Elsewhere in this record is evidence that Respondent's only concern was that union activity not occur on the machines; Rodgers even encouraged David to find out all she could about unions, telling her to consult with her father and attend a union meeting if she wished. Simply speaking, even if I impute to Mozer Hunt's and Callahan's knowledge of Cota's union-organizing expression, there is no evidence, direct or indirect, of union bias sufficient to motivate the discharge.

Indeed, the reasons advanced by Respondent for firing Cota are corroborated by him. He says, by way of rejoinder, that Respondent had long tolerated his attitude problems. But his observation here ignores the supervisory shakeup directed by Rodgers. Assuming that Hunt and Callahan were lax in enforcing company policy regarding reading and disruptive conduct it does not follow that Mozer was. When different supervision became aware of his conduct, it is not surprising that a different reaction was obtained.

Third, the question of the timing of Cota's discharge is subject to different reasonable interpretations. The General Counsel observes that his discharge occurred 2 days after Karr told Hunt Cota had said he was going to organize a union. But it also occurred at the end of the month only days after Mozer stated he wanted Cota

fired for reading and disruptive conduct. In that regard it appears the axe was already falling before Cota ever expressed any union-organizing interest.⁷

Finally, there is no evidence that Respondent's assigned reason for discharging Cota was a pretext. Only Mansker supports Cota here and she minimized Cota's reading to a level that rendered her testimony doubtful, since Cota admitted to a greater level than she was willing to describe. I have already noted that Mansker's testimony to the effect no warnings were given is subject to doubt because she may not have attended the warning meeting. The only reading which was tolerated was the company parts manual. That is obviously a different matter, for it had a training purpose.

In conclusion, I find the General Counsel has failed to prove that Cota was discharged because he said he intended to organize a union.

B. Ruth Makert

Neither am I able to conclude that Ruth Makert was discharged for any reason prohibited by the Act. She had not engaged in any union activity except for the signing of a card and there is no credible evidence that Respondent knew or believed she had done so. At best her activity would fall within the protection of the Act only if her decision to hire an attorney to deal with perceived problems with Rivera constituted protected concerted action. I cannot conclude that it did. Rather, it appears her hiring an attorney for that purpose was simply to vindicate her own personal differences with Rivera.

It is clear to me that Makert resented Rivera for several reasons. First, she apparently believed Rivera was excessively ambitious, wanting a job in the office. Second, when Makert failed the probationary period, she found herself taking orders from Rivera whom she had trained. That did not sit well with her. Furthermore, I am not persuaded that Rodgers or Machado told Makert she was "associating with the wrong people." Even if the remark were made, it is not clear that it had anything to do with union organizers. More likely it had to do with her becoming excessively involved emotionally with fellow workers, such as Little whose demotion had reduced Makert to tears. Certainly Respondent's charge that she was refusing to communicate with the supervisors was accurate. She claimed she did not have to talk to Rivera, and Coulson had to make a special effort to "break the ice." Finally, when she became so angry with Rivera that she hired an attorney it is clear that her only purpose was to figure out a way to continue working without having to speak to Rivera. That object had no

⁵ It is true that there is Little's testimony that Mozer virtually admitted he was discharging Cota for being a union activist, but I do not find Little to be credible. She has a bias against Respondent and Respondent has presented credible evidence that in all likelihood she was not in the plant at the time the alleged conversation occurred. In this regard I observe that it is possible Little had returned to the plant in late January to discuss her resumption of duties upon the expiration of her leave of absence. She did not place the remark in that context and the General Counsel did not recall her to explain. In view of these facts, as well as her long silence about the alleged conversation, I believe she seized upon the hearing as an opportunity to vent her anger at Respondent. Her testimony is rejected.

⁶ Assuming Hunt's statement to Karr was an unlawful threat to discharge an employee for union activity, I do not believe a remedy is necessary. The statement is not alleged as a violation and it is totally isolated.

⁷ Cota testified that in late January he asked for a transfer to the graveyard shift and on January 30, the day before his discharge, Hunt told him his request had been approved. Assuming Cota is telling the truth here, Hunt may not have been privy to Mozer's decision. Hunt was the assistant department manager and probably had the authority to make the transfer without Mozer's approval. Yet, there is reason to doubt Cota here. Karr reported that Cota said he intended "to milk" Respondent for \$1 million. Use of the verb "milk" implies a willingness to stretch the truth to obtain the desired end. Either way there is no reason for me to conclude Mozer's decision followed, rather than preceded, Respondent's supposed acquisition of knowledge of Cota's pronoun feelings.

"mutual aid or protection" in mind. She was only trying to improve her own circumstances. Indeed, it appears she was trying to dictate her own terms and conditions of employment.⁸ I am, therefore, unable to find that her discharge violated Section 8(a)(1) or (3) of the Act. Likewise, the demotion which she experienced in early April and statements connected to it had nothing to do with reasons prohibited by the Act. The General Counsel has failed to show by a preponderance of the evidence that Respondent had a discriminatory motive in its demotion and later discharge of Makert.

C. The Discharge of Yvonne David

Here again, I conclude the General Counsel has failed to show by a preponderance of the evidence that Yvonne David's discharge violated Section 8(a)(1) and (3). The only union activity in which she had engaged was to express a fear in late March that she might be fired during the Union's organizing drive. The fear had been instilled in her by an outsider and she expressed it to a fellow employee. That resulted in a counseling conversation with Rodgers and Mozer. During the conversation she was noncoercively asked what had happened and was assured that she would not be fired over union matters. Rodgers told her she was free to engage in union activity, including consulting with any knowledgeable person about unions and her only restriction was to refrain from union activity while working at her machine. Rather than exhibiting union animus the incident exhibits a tolerance and a recognition of employee rights. Afterwards she told a fellow employee that everything was now all right.⁹

David became upset with Makert's demotion and either then or shortly thereafter began responding rigidly to supervisory directions. Her tone was interpreted as sarcastic and rude and she antagonized the inexperienced Rivera and Coulson who probably overreacted. David's only overt union activity was to attend the April 28 union meeting at the Civic Center. She, however, was not alone in this regard. No doubt Magner saw others accept the Union's flyers and there is no credible evidence that Respondent knew she had gone to the meeting.

I think it is fair to say that the May 1 incident which resulted in her suspension was blown out of proportion by Rivera and Coulson, but the decision was made by Machado who relied on their report. That is not to say that a communication/insubordination problem was not occurring; David admitted it was. Whether it justified a

suspension is not for me to say, but there is no proof that the suspension had anything to do with her having attended the union meeting.

By May 9, having observed Makert's discharge, considering it to be unfair, and combining it with what she believed to be unfair treatment of her, David was seething. She admits as much when she concedes she said she would pull out Rivera's hair. Neither is there reason to doubt Hanson's testimony that David also said she would take Rivera with her if she was fired and would shoot Rivera or anyone who helped Rivera fire her. Her anger is clearer still when one notes the remark she placed on her termination slip to the effect that Rivera had lied to her and "provoked my attitude to no end."

That David's discharge was not motivated by antiunion considerations is apparent when one considers the decision was made by West to whom Rivera's final complaint originally went and who was already aware of David's earlier problems. There is no proof that either West or Machado was actually aware that Rodgers had spoken to her on March 20, but even that cannot be characterized as having been in an antiunion context. The only evidence before West and Machado was the continued complaints by her immediate supervisors and a threat of physical harm to one of them. Up to that time they had been reasonably tolerant and had even shifted her to different supervisors in order to correct the problem. David had exhausted their goodwill by the time she angrily threatened to pull out Rivera's hair.

Finally, I observe that there is neither union animus in this discharge, nor evidence that the discharge was for pretextuous reasons. The only factor favoring a violation is the timing in the sense that her suspension occurred only 3 days after she attended a union meeting. That, however, is not enough to warrant the conclusion that her attending the meeting had anything to do with the discharge, particularly in the face of her own admission that she was constantly being mildly insubordinate to two new supervisors who lacked confidence in their own authority. While their reaction may have been somewhat unfair, it is not unreasonable for West and Machado to have relied on them and to have backed them up. Indeed, the same can be said for Makert's discharge as well.

Therefore, I find that the evidence presented by the General Counsel in support of the contention that Respondent violated Section 8(a)(3) and (1) of the Act with respect to David's discharge and the events leading to it fails to support the allegation.

Based on the foregoing findings of fact and the record as a whole I hereby make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(2) of the Act, engaged in commerce and in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

⁸ Adding confusion to her purpose in hiring an attorney is her pretrial affidavit in which she says she told Rodgers she had an attorney for "real estate." Why did she tell that to the Board investigator when everyone, including her, now agrees that she admitted the attorney was "against" Rivera? Perhaps the only thing which can truly be discerned is that this is another instance demonstrating her doubtful credibility.

⁹ Machado's scolding David on April 3 for recklessly telling a friend that Mozer had been fired does not seem to have any bearing on the issues before me. The General Counsel argues that it is evidence of Respondent's ability to keep close tabs on its employees, but I do not agree. It is only evidence that that incident somehow got back to him.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not engaged in the unfair labor practices alleged in the complaint.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁰

It is ordered that the complaint be, and it hereby is, dismissed in its entirety.

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.